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Civil Procedure - Federal Jurisidiction - Federal Test of Doing Business Determines Corporate Amenability to Service of Process in Federal Cause of Action

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CASE NOTES

CIVIL PROCEDURE—FEDERAL JURISDICTION—FEDERAL TEST OF "DOING BUSINESS" DETERMINES CORPORATE AMENABILITY TO SERVICE OF PROCESS IN FEDERAL CAUSE OF ACTION.

Goldberg v. Mutual Readers League, Inc. (E.D. Pa. 1961).

Defendants, Mutual Readers League, Incorporated and Saul Schenker, were charged with violating certain provisions of the Fair Labor Standards Act.[1] Jurisdiction over the subject matter of this action is conferred upon the United States District Courts by Section 17 of the Act.[2] Contending that as a foreign corporation it was not subject to the jurisdiction of the district court, defendant corporation moved to dismiss the government's complaint. Defendant corporation, although operating principally in Des Moines, Iowa, was incorporated in the state of Delaware. It was engaged in the business of selling subscriptions to various magazines through "contract-dealers" in numerous states. Defendant Schenker represented the corporation as contract-dealer in Pennsylvania under an agreement designating him as "independent contractor." In spite of this description, the court found that the defendant corporation exercised a high degree of control over Schenker and his employees.[3] The government contended that defendant Schenker was defendant corporation's agent, that the former activities constituted "doing business" in Pennsylvania, and that therefore defendant corporation was subject to the personal jurisdiction of the federal district court. The United States District Court for the Eastern District of Pennsylvania, in denying defendant corporation's motion to dismiss, *held* that defendant corporation's contacts in that district were sufficient to subject it to the jurisdiction of the court. *Goldberg v. Mutual Readers League, Inc.*, 195 F. Supp. 778 (E.D. Pa. 1961).

There are neither rules nor statutes to which the federal district courts may resort to determine when foreign corporations are amenable to service of process so that in personam jurisdiction may be had over them in either diversity or non-diversity suits.[4] In the instant case, violation

1. 29 U.S.C. §§ 201 to 219 (1958).
2. 29 U.S.C. § 217 (1958).
3. The court found that Schenker could deal only in those magazines represented by the defendant corporation. The corporation, moreover, had the right to set terms and conditions of sale and to inspect Schenker's books at any time. Schneker also had to meet certain sales quotas and to remit forty per cent of his proceeds to the corporation three times weekly. Goldberg v. Mutual Readers League, Inc., 195 F. Supp. 778 (E.D. Pa. 1961).
4. Individuals and corporations within the geographic boundaries of the state in which the district court sits are amenable to service of process. FED. R. CIV.

of a federal statute was the basis of the litigation, and the Fair Labor Standards Act granted the federal district court jurisdiction over the subject matter of the case.[5] This was not a diversity situation. In those cases which arise in the federal courts solely on the basis of diversity of citizenship, state law has been applied by some courts to determine the validity of the federal court's jurisdiction over the person of the foreign corporate defendant.[6] However, it is interesting to note that the circuit courts of appeals are not in harmony on the issue of whether state law should be determinative of a federal court's jurisdiction even in diversity cases.[7] The doctrine of *Erie R.R. v. Tompkins*[8] is the basis of the rationale employed by those courts which use state law to establish whether, in diversity situations, a corporation may be subjected to the jurisdiction of a particular federal district court. Accordingly, those tribunals apply the state test to see if the corporation was "doing business" so as to render it amenable to service of process within the state. A United States District Court sitting in Michigan in diversity formulated the view that federal law should be applied to determine whether a foreign corporation is doing business in the district so as to be subject to service of process, when a federally-created right is asserted in a federal court. The same court maintained that state law governs when a state-created right is asserted in a federal court whose jurisdiction over the parties is based on diversity of citizenship.[9] In the latter case, the additional problem of fourteenth amendment due process restrictions must be dealt with, whereas federal rules on territorial reach of service of process are subject only to congressional policy.[10]

P. 4 (F). Since a corporation has not the physical properties of a natural person, certain criteria have had to be developed in order to determine whether the corporation is within these boundaries.

5. 29 U.S.C. § 217 (1958).

6. Pulson v. Am. Rolling Mill Co., 170 F.2d 193 (1st Cir. 1948); Nichols v. Cowles Magazines, Inc., 103 F. Supp. 864 (D. Mass. 1952).

7. For a state test: Partin v. Michael Art Bronze Co., 202 F.2d 541 (3d Cir. 1953); Benjamin v. Robbins Air Rifle Co., 209 F.2d 173 (5th Cir. 1954); Canvas Fabricators v. Wm. E. Hoopes Sons Co., 199 F.2d 485 (7th Cir. 1952). For a federal test: Franch v. Gibbs Corp., 189 F.2d 787 (2d Cir. 1951); Lasky v. Norfolk W. Ry., 157 F.2d 674 (6th Cir. 1946).

8. 304 U.S. 64, 58 S. Ct. 817 (1938). In determining whether the federal district court sitting in a diversity action should apply the substantive law of Pennsylvania, the court looked to the very purpose of diversity of citizenship jurisdiction, that is, the prevention of discrimination in state courts against those who are not citizens of the state. The idea that the federal district court in diversity is an adjunct state court has pervaded the atmosphere of a long line of diversity cases since *Erie*. In Guaranty Trust Co. v. York, 326 U.S. 99, 65 S. Ct. 1464 (1945), the court held that *Erie* stressed the intention to insure that, in diversity of citizenship jurisdiction cases, the outcome of the litigation in the federal court should be the same, so far as legal rules are determinative of the outcome, as it would be if tried in a state court.

9. Singleton v. Atlantic Coast Line R.R., 20 F. R. D. 15 (E.D. Mich. 1956). See *Federal and State Precedents on Doing Business: Jurisdiction over Foreign Corporations Under Erie*, 67 YALE L.J. 1094 (1958).

10. Jaftex v. Randolph Mills, 282 F.2d 508 (2d Cir. 1960). But congressional action must conform to the due process requirements of the Fifth Amendment.

Cases decided by federal courts holding that foreign corporations were or were not "doing business" under a state test, do not furnish any "federal law" on the issue of a federal court's jurisdiction over a foreign corporation in a suit arising under a federal statute. Technically, *International Shoe Co. v. Washington*[11] and *McGee v. International Life Ins. Co.*,[12] leading cases in the area of state jurisdiction yield no federal jurisdictional law relative to what constitutes "doing business". They established the limits to which a state might go in exercising jurisdiction over foreign corporations and yet stop short of violating the due process clause of the fourteenth amendment. Limitations on the jurisdiction of federal district courts over foreign corporations in non-diversity cases have never been clearly defined. Apparently these cases must be decided by looking to an undefined corpus of "federal law". Despite the shadows of doubt which shroud the applicability of the *International Shoe* rule to federal jurisdictional problems, one federal court applied that formula in a case in which the jurisdiction of the federal court was founded upon federal law.[13] In another action in a federal court, founded not on diversity but on trademark infringement,[14] the court looked to *International Shoe* and said ". . . the rule as the Supreme Court has defined it, seems clear that the defendant must have certain minimum contacts within the territory of the forum of such character that the maintenance of the suit does not offend traditional ideas of fair play and substantial justice."[15]

The phrase "doing business" in the federal venue statute[16] has been a source of great consternation in determining jurisdiction over non-resident corporations. The confusion stems from the failure of the courts to distinguish between jurisdiction over the corporation and venue.[17] However, those courts sensitive to the distinction often assume that "doing business" for jurisdictional purposes is no different than "doing business" for venue.[18] As one possible solution to the dilemma, one writer suggests the use of federal "doing business" precedents for jurisdiction in order to circumvent possible confusion created by one uniform federal venue

11. 326 U.S. 310, 66 S. Ct. 154 (1945). There the corporation maintained no office in the state, nor did it have any stock of merchandise there, but the court found that the solicitation of orders by the corporation's salesmen in the state, and the shipping of the goods into the state were so regular and systematic as to constitute doing business in the state.

12. 355 U.S. 220, 78 S. Ct. 199 (1957). A single insurance contract mailed into the state of California by the foreign corporation established a substantial connection with the state sufficient to confer jurisdiction on the state's courts.

13. Lone Star Package Car Co. v. Baltimore O.R., 212 F.2d 147 (5th Cir. 1954). The court stated that the broad policy statements of the *International Shoe* particularly extend to cases in which the jurisdiction of the federal court is dependent upon federal law.

14. Consolidated Cosmetics v. D. A. Publishing Co., 186 F.2d 906 (7th Cir. 1951).

15. *Id.* at 907.

16. 28 U.S.C. § 1391(c) (1952).

17. Cooke v. Kilgore Mfg. Co., 105 F. Supp. 733 (N.D. Ohio 1952).

18. Ronson Art Metal Works, Inc. v. Brown & Bigelow, Inc., 104 F. Supp. 716, 724 (S.D.N.Y. 1952).

definition of "doing business" and varying jurisdictional definitions of "doing business" of the fifty states.[19]

Despite the obvious lack of uniformity among the courts in determining a foreign corporation's amenability to service of process in federal question cases, there can be seen a trend to shield these cases from the influences of the states so that federal courts may, without any qualms, disregard state standards and fourteenth amendment due process, when determining whether personal jurisdiction may be had over the person of the corporate defendant.[20]

By the authority of a federal statute "a corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business."[21] One might infer from this that the federal courts are to determine what Congress meant by "doing business" as set out in this statute. However, this statute is concerned with venue rather than with jurisdiction over the person of the defendant. The Federal Rules of Civil Procedure also are barren of any indication that the federal courts are to formulate their own criteria for subjecting a foreign corporation to the jurisdiction of a particular district court. Service of process may be made "upon a domestic or foreign corporation" in a particular manner under Rule 4 (D) (3),[22] but Rule 4 (D) (7)[23] provides that service of process may also be made "in the manner prescribed by the law of the state in which the service is made for the service of summons or other like process upon any such defendant in an action brought in the courts of general jurisdiction of that state." Rule 4 (D) (3) sets forth the manner in which service of process is to be made upon the subject corporation, but it makes no mention of when the corporation is so subject. The conclusion that must be reached is unavoidable. Congress has not yet set forth a federal test to determine when, in a case based on federal law, a foreign corporation is subject to the in personam jurisdiction of the federal district court. Where then are the federal district courts to look? The case at bar held that resort must be made to federal rather than to state law. However, after observing that the court in doing so relied chiefly on the rationale of *Lone Star Package Car Co. v. Baltimore & O. R.*,[24] one may seriously question the "distinction" between federal and state criteria in this area,[25] since that case relied in the main on the

19. Barrett, *Venue and Service of Process in the Federal Courts — Suggestion for Reform*, 7 VAND. L. REV. 608, 619 (1954).

20. Bar's Leaks Western, Inc. v. Pollock, 148 F. Supp. 710 (N.D. Cal. 1957). Due process limitations imposed by the Fifth Amendment, however, may not be disregarded.

21. 28 U.S.C. 1391(c) (1958).

22. Fed. R. Civ. P. 4(D) (3).

23. Fed. R. Civ. P. 4(D) (7).

24. 212 F.2d 147 (5th Cir. 1954).

25. One circuit judge put it so well when he commented upon service under New York and federal law, and he observed that "Neither in our decisions nor in those of the New York Court of Appeals is there an admitted or defined distinction; this has to be found in the nuances of meaning between the lines of judicial opinions." Jaftex v. Randolph Mills, 282 F.2d 508, 509 (2d Cir. 1960).